

**STATE OF NEW MEXICO  
WATER QUALITY CONTROL COMMISSION**

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**In the Matter of:**

**MARISELA ORNELAS, d/b/a  
VISION MOBILE HOME PARK, LLC,**

**Respondent.**  
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**No. WQCC 21-04 (CO)**

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**ORDER GRANTING-IN-PART NMED'S MOTION FOR AN EXPEDITED HEARING  
AND DENYING-IN-PART REQUEST FOR SUMMARY PROCEDURE**

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THIS MATTER came before the Hearing Officer on the Ground Water Quality Bureau's  
*[Opposed] Motion for An Expedited Hearing and Summary Procedure*, filed on May 24, 2021.

Having considered the opposed motion and the premises therein,

**FINDS:**

1. On February 9, 2021, Respondent timely filed an Answer and Request for Hearing under 20.1.3 NMAC in response to the January 8, 2021 Administrative Compliance Order (ACO) issued by the Ground Water Quality Bureau.
2. On April 13, 2021, the N.M. Water Quality Control Commission (WQCC) set a hearing for June 8, 2021, on the ACO.
3. As defined by 20.1.3.7.9 NMAC, a hearing means the evidentiary hearing conducted before the commission or a hearing officer on a request for a hearing.
4. The Hearing Officer is imbued with the authority to "rule upon motions and procedural requests that do not seek final resolution of the proceeding and issue all necessary orders." 20.1.3.10.B.2.b NMAC.

5. Respondent has fifteen (15) days to provide a response to an opposed motion.

20.1.3.15.D. However, the Hearing Office may rule on a procedural motion prior to the expiration of the time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling. *Id.* at F.

6. At the hearing, the department has the burden of going forward with the evidence and of proving by a preponderance of the evidence that the violation occurred, and that the proposed civil penalty, revocation, or suspension, as the case may be is appropriate.

Following the establishment of a prima facie case, the respondent shall have the burden of going forward with any adverse evidence or defense to the allegations. 20.1.3.19.J NMAC.

7. 20.1.3.19.H provides for requests for admissions to limit the scope of the hearing to contested issues. On May 10, 2021 the department served a request for admissions on Respondent, and as of the date of this Order, Respondent has not admitted or denied the statements. Under the rule, each statement shall be deemed admitted unless within 20 days after service of the request, Respondent serves a sworn written response specifically denying such statement.

8. The department has filed a witness list and exhibit list as required under 20.1.3.19.E NMAC (each party shall, 15 days before the hearing, provide the name and address of each person expected to be called as a witness and a description of the general subject matter of the anticipated testimony of each witness, and a list of exhibits to be offered into evidence at the hearing).

9. Respondent has not complied with this requirement which provides both parties with discovery, a full and fair due process hearing, and to avoid undue prejudice and surprise.

10. Under 20.1.3.19.D.5 NMAC, failure to make discovery may be sanctioned by the Hearing Officer. The sanctions include refusal to allow the testimony of a witness not identified, and denial of admission of a document not disclosed.
11. Public notice was provided as required by 20.1.3.17.C that an evidentiary hearing would be held on June 8, 2021 (not later than 30 days prior to the hearing date).

IT IS THEREFORE ORDERED THAT:

1. NMED's motion to expedite the compliance order hearing as outlined in 20.1.3.22 NMAC summary proceedings is hereby denied. The department is under the obligation to present their prima facie case and satisfy their evidentiary burden. Witnesses will be called to provide a summary of their testimony and stand for cross examination.
2. However, in fairness to the department and avoid undue surprise, Respondent is forewarned that non-compliance with the rules will result in the Hearing Officer barring Respondent's witnesses from testifying and excluding its exhibits from evidence.
3. Respondent is hereby put on notice that its witness list and exhibit list shall be filed in the Office of Public Facilitation on or before June 1, 2021 5:00 pm MST and served on the department, or suffer the sanctions outlined in 20.1.3.19.D.5 NMAC.

IT IS SO ORDERED.

Gregory  
Chakalian

Digitally signed by  
Gregory Chakalian  
Date: 2021.05.27  
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Gregory Chakalian  
Administrative Law Judge  
Office of Public Facilitation

## Certificate of Service

I hereby certify that on May 27, 2021 a copy of the foregoing **Order** was emailed to the persons listed below. A copy will be mailed first class upon request.

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